

EASTWOOD V. STATE TAXATION & REVENUE DEPARTMENT

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**BRENT M. EASTWOOD,
Protestant-Appellant,
v.
STATE OF NEW MEXICO
TAXATION AND REVENUE
DEPARTMENT,
Respondent-Appellee,
IN THE MATTER OF THE PROTEST
OF BRENT AND MELANIE EASTWOOD
TO DENIAL OF REFUND ISSUED UNDER
LETTER ID NO. L-0569171920**

No. 34,948

COURT OF APPEALS OF NEW MEXICO

February 2, 2016

ADMINISTRATIVE HEARINGS OFFICE TAX ADMINISTRATION, Brian VanDenzen,
Hearing Officer

COUNSEL

Brent M. Eastwood, Arlington, VA, Pro Se Appellant

NM Taxation & Revenue Department, Brad Odell, Chief Legal Counsel, Elena Morgan,
Legal Counsel, Santa Fe, NM, for Appellee

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
LINDA M. VANZI, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

{1} Brent M. Eastwood (Appellant) appeals from the Taxation and Revenue Department's (Department) decision and order. This Court's notice proposed to affirm the Department's denial of Appellant's protest. Appellant filed a letter, which we construe as a memorandum in opposition. Not persuaded by Appellant's assertions, we affirm.

{2} This Court's calendar notice proposed to conclude that by failing to appear at the hearing for which he had proper notice, Appellant abandoned his protest, thereby forfeiting his right to appeal. *Cf. Sitzer v. State Taxation & Revenue Dep't*, 2000-NMCA-056, ¶ 12, 129 N.M. 274, 5 P.3d 1078 (holding that where appellant contesting revocation of license did not comply with both mandatory statutory requirements to request a hearing appellant "forfeited" his right to a revocation hearing). By not appearing at the hearing for which Appellant had proper notice, he waived any arguments challenging the Department's tax assessment on appeal. *See Easterling v. Peterson*, 1988-NMSC-030, ¶ 4, 107 N.M. 123, 753 P.2d 902 (recognizing that "waivers may be implied by a course of conduct which, in turn, will estop the one who waives from asserting the right waived").

{3} Appellant failed to respond to this Court's proposed disposition, as required by our rules and case law. *See* Rule 12-210(D)(3) NMRA; *see also Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."). Appellant asks this Court to stay the appeal on grounds that the Federal Bureau of Investigations is investigating the Department and Governor Susana Martinez's administration for unlawfully using tax audits against private citizens in a retaliatory manner. While this may be the case, it is immaterial to the instant appeal. Appellant does not point out error with or otherwise respond to the legal rationale in support of this Court's proposed disposition. *See State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (indicating that when a case is decided on the summary calendar, an issue is deemed abandoned when a party fails to respond to the proposed disposition of that issue).

{4} For these reasons and those stated in this Court's notice of proposed disposition, we affirm.

{5} **IT IS SO ORDERED.**

RODERICK T. KENNEDY, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

LINDA M. VANZI, Judge